done which the law regards as marking the commission of the particular offence and there must be proof that the offender was actuated by the intention to go further and achieve a definite end which is a specific crime. The definition of an attempt to commit a crime in *Stroud's* Judicial Dictionary, 3rd Edn. is "an act done with intent to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted." In other words ".....a man cannot attempt to do what he does not intend, if he is able, to do" (*Russell* on Crimes, 11th Edn., p. 188). But all these references refer to a crime in the normal meaning of the word where there must be the *actus reus* and *mens rea* before it can be committed. The offence with which we are dealing is a statutory offence created for the general benefit of mankind in an attempt to halt the unrestricted import and export of Dangerous Drugs. If a person utterly innocently in possession of a dangerous drug in complete and blissful ignorance of what he is carrying is guilty of an offence if he exports it or imports it in ignorance of its very existence it does not seem repugnant to the normal English meaning of "attempt" to say that he attempts to export it while in his state of blissful ignorance he is walking through the customs barrier towards the boundaries of the territory of the Federation of Malaya. The word 'attempt' derives from the Latin "*attemptare*" and generally means to make an effort or endeavour to do or accomplish some action. The fact therefore that he did not know that he was making the effort to export or accomplish the exportation of the raw opium in view of the absolute prohibition contained in section 5 of the Dangerous Drugs Ordinance, would appear to be immaterial. I see nothing illogical in holding that where there is an absolute prohibition against the doing of an act there may also be an absolute prohibition against the making of an attempt and that a purely involuntary attempt is an offence. For that reason I uphold the decision of the learned President on that point, and dismiss the appeal. There was wisely no appeal against sentence.

Appeal dismissed.

LEE SZU YIN v. PUBLIC PROSECUTOR

[A. Cr. J. (Ong J.) October 12, 1961]

[J.B. — Criminal Appeal No. 26 of 1961]

Criminal Law and Procedure — Jurisdiction — Foreign actus reus.

Customs and Excise — Undervaluation and declaration — Customs Ordinance, 1952, ss.12(1) and (2), 129 (1)(a) and 136(1).

The appellant was manager of a company carrying on business as dealers in cotton goods in Singapore. He sold certain goods to four firms trading in the Federation amounting according to the invoices to $847. These goods and invoices were to be delivered in the Federation by the proprietor of a transport business in Singapore. In the course of transportation the goods were checked at Johore Bahru. The Customs Officer thought that there was an undervaluation and after investigations made by him he made his own assessment at $1,192.50, the difference in duty being $80.53. The appellant was subsequently charged under section 129(1)(a) and section 136(1) of the Customs Ordinance, 1952 and the proprietor of the transport business under section 129(1)(a) of the said Ordinance and both were found guilty — the appellant being fined $200 or one month's imprisonment and the proprietor of the transport business was cautioned and discharged under section 173A(ii)(a) of the Criminal Procedure Code. On appeal,

Held: (1) the Magistrate's Court at Johore Bahru had no jurisdiction to try the appellant because the *actus reus* took place in Singapore;

(2) the presumption under section 12(2) has been abundantly rebutted and for this reason also the appellant ought to have been acquitted;

(3) it was impossible to hold that there was any relationship of principal and agent between the appellant and the proprietor of the transport business.

Cases referred to:—

(1) *Macleod* v. *Attorney-General for New South Wales* [1891] A.C. 455, 458.

(2) *R.* v. *Oliphant* [1905] 2 K.B. 67.

(3) *R.* v. *de Marny* [1907] 1 K.B. 388.

CRIMINAL APPEAL.

Robert Hsieh for the appellant.

Syed Abdul Rahman (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Ong J.: In the Magistrate's Court at Johore Bahru the appellant was charged, as manager of Kiauw Hin & Co. Ltd., Singapore, with the offence of making a Customs declaration through an agent which undervalued the goods declared, in contravention of section 129(1)(a) and section 136(1), and punishable under section 129(1) of the Customs Ordinance, 1952.

In the same Court one, Phang Chang Pew, who was alleged to have been the agent of the appellant, was also charged with the offence of making a declaration required by section 75 of the Customs Ordinance, 1952, which undervalued the same goods, in contravention of section 129(1)(a) and punishable under section 129(1) of the Ordinance.

Both the accused were tried jointly and found guilty. The appellant was sentenced to a fine of $200 or one month's imprisonment in default. Phang Chang Pew was cautioned and discharged under section 173A(ii)(a) of the Criminal Procedure Code. An order was also made for the confiscation of the goods.

The facts may be stated briefly. The appellant, a Shanghai man resident in Singapore, was manager of Kiauw Hin & Co. Ltd., a company carrying on business as dealers in cotton goods at 24 North Bridge Road, Singapore. On January 27, 1961, which was the date appearing on the company's invoices, 300 dozen cotton gloves, 14¾ dozen vacuum flasks and 120 dozen face towels were sold to four firms trading in the Federation. Their total value according to the invoices was $847.00. Phang Chang Pew was the sole proprietor of a transport business in Singapore. On January 30, 1961 he sent a

lorry to Kiauw Hin & Co. Ltd. to collect goods to be carried by road through Johore Bahru into the Federation for delivery to the buyers. The invoices were collected at the same time. The usual Customs declaration form, already signed in blank by Phang, was passed on by him with the relevant invoices to a person working in Woodlands for filling in. When the goods in question were checked by the Johore Bahru Customs, samples were taken and produced to Mr. William S. M. Yap, the Senior Customs Officer, for assessment of duty. He thought there had been an undervaluation and instructed Lau Kim Sek, a revenue officer, to carry out market investigations into the open market value of those goods. In the result Lau Kim Sek made his own assessment at $1,192.50. The difference between declared value and assessed value was $345.50 and the difference in duty $80.53. Both the appellant and Phang were charged, convicted and sentenced as above-stated. The appellant alone has appealed against the conviction and sentence.

In my opinion the conviction cannot be supported, whether in law and on the facts. In *Macleod* v. *Attorney-General for New South Wales,* [1] Lord Halsbury L.C., delivering the judgment of the Privy Council, said:

> "All crime is local. The jurisdiction over crime belongs to the country where the crime is committed, and, except over her own subjects, Her Majesty and the Imperial Legislature have no power whatever."

The same principles apply in this country. The *actus reus* took place in Singapore. The doer of the act was a Shanghai man in charge of a limited liability company carrying on business in Singapore and therefore, presumably, incorporated in Singapore. It is thus perfectly clear that the Magistrate's Court at Johore Bahru has no jurisdiction to try the appellant any more than it has to try a Shanghai man who, in China or in Hongkong, delivers a false or fictitious invoice with the goods he has sold there to a customer.

In this connection I have not overlooked the other cases, such as *R.* v. *Oliphant* [2] and *R.* v. *de Marny* [3] in which it was held that a person who from a foreign country initiates acts taking effect in England which are criminal offences in England are liable to be tried and punished in the county or place in England where the acts take effect. In *Oliphant's* case the defendant was an employee in the Paris branch of a London firm whose duty was to transmit to London all slips for cash received by him in Paris to be entered in a cash book kept in London. He fraudulently misappropriated certain moneys, omitted to enter these amounts and so failed to send the relevant slips to London. It was held that the Central Criminal Court had jurisdiction to try the case. In *de Marny* the offence was aiding and abetting the publication in England of obscene literature sold by foreign printers who sent them from abroad through the post. The distinction to be drawn between those cases and the instant one is that in the former the portion of the act which was done abroad formed one continuous act with its culmination in the criminal act committed within the jurisdiction, whereas here the making of the under-valuation and declaration were entirely independent acts done by a third party of his own volition. It is to be observed that the charge against the appellant was not for abetment, under section 135, of an offence by Phang Chang Pew. He was charged as a principal.

The conviction of the appellant cannot stand for other reasons also. First, the assessment of the higher market value was made by Lau Kim Sek under section 12(1) of the Ordinance. Sub-section (2) reads as follows:

> "When a valuation of any goods has been made by the proper officer of customs, such valuation shall be presumed to be correct until the contrary is proved."

Lau Kim Sek assessed the value of the goods in accordance with the definition of "value" contained in section 2 of the Ordinance, namely —

> "'Value' in relation to imported goods means the price which an importer would give for the goods on a purchase in the open market if the goods were delivered to him at the place of payment of duty and if freight, insurance, commission and all other costs, charges and expenses (except any customs duties) incidental to the purchase and delivery at such place had been paid."

He admitted that he relied solely on an invoice of August 1960 in respect of the cotton gloves for making his assessment and that no investigation of the current market value had in fact been made in the open market. To rebut the statutory presumption that his assessment was correct, the appellant not only gave evidence on his own account, but called in addition three other witnesses (one of whom was the actual purchaser of part of the total consignment) who deposed to the actual open market value of the goods in question at the relevant date. This particular witness gave evidence concerning the open market value of each of the three categories of goods, whereas Lau did not even explain how he valued the face towels and vacuum flasks. Consequently (and this point appears to have been entirely overlooked by the learned Magistrate) the presumption under section 12(2) has been abundantly rebutted, and for this reason also the appellant ought to have been acquitted.

Secondly, it was incumbent on the prosecution to prove that Phang Chang Pew was in fact the appellant's agent, either generally or for the specific purpose of making the Customs declaration. To establish such agency the prosecution relied simply on the delivery of the invoice by Kiauw Hin & Co. Ltd. to Phang Chang Pew's servant or agent who called to collect the goods. If a customer of Robinsons in Singapore sent a messenger to collect goods purchased, and Robinsons gave the messenger a sale note for such goods, I cannot see how the giving of such note can be held to constitute this messenger an agent of Robinsons for any purpose whatsoever. In the teeth of express evidence by Phang

Chang Pew and by one of the purchasers from Seremban, in the instant case, that Phang was acting as agent for the Federation purchasers of the goods in making the Customs declaration, it was impossible to hold that there was any relationship of principal and agent between the appellant and Phang.

The appeal is accordingly allowed, and the conviction of the appellant quashed. I order that the fine paid be refunded and also set aside the order for confiscation. By reason of this appeal being allowed, the order made with regard to Phang Chang Pew cannot stand, and I accordingly set aside the order relating to him also.

Appeal allowed.

Solicitors: *Boswell, Hsieh & Lim.*

ABDUL JABBAR v. A. MOHAMED SHARIFF & CO., LTD.

[O.C.J. (Ambrose J.) June 8, 1961]
[Singapore — Suit No. 1098 of 1959]

[C.A. (Rose C.J., Tan Ah Tah and Chua JJ.) October 20, 1961]
[Singapore — Civil Appeal No. 11 of 1961]

Estoppel — Preliminary issue — Defence of res judicata — Estoppel by record or issue estoppel — Reference to record of earlier proceedings — Whether rule permitting such reference limited to cases of estoppel by res judicata.

On September 24, 1953, the present defendants obtained judgment against the present plaintiff for $40,125.54 in Suit No. 1532 of 1953. In the present suit the present plaintiff claims (a) a declaration that the present defendants' rights under the judgment were superseded by an alleged instrument of compromise dated the 29th October, 1953, and (b) repayment of $3,192.85 being the amount by which the sum received by the present defendants on execution of the judgment exceeds the sum due to them under the alleged instrument of compromise. By consent of the parties a preliminary issue was tried as to whether the present plaintiff was estopped from making his present claim by the dismissal of his application by summons in Chambers dated the 3rd April, 1958, in the former suit for an order that satisfaction of the judgment be entered. To ascertain the issue decided by the then Chief Justice when he dismissed the application by summons in Chambers, it was necessary to examine his grounds of decision. The question arose whether it was open to the trial Judge in the present case to do so.

Held: (1) on the facts, the estoppel by judgment relied on by the defendants was an estoppel by record or issue estoppel as opposed to an estoppel by *res judicata* affecting the entire cause of action;

(2) the rule that to ascertain what was actually decided at an earlier trial the Court may refer to the record of the earlier proceedings is not limited to cases of estoppel by *res judicata* but applies also to cases of estoppel by record;

(3) the point decided by the then Chief Justice when he dismissed the application by summons in Chambers was that the present defendants had reasonable grounds for refusing to give consent to entry of satisfaction of judgment, as it was by no means clear that the compromise was binding; that was entirely different from the point in the present proceedings, namely, whether the compromise was binding; and the plea of estoppel by record therefore failed.

Cases referred to:—

(1) *Outram* v. *Moorewood* (1803) 3 East 346.
(2) *Hoystead* v. *Federal Commissioner of Taxation* (1921) 29 C.L.R. 561.
(3) *Blair* v. *Curran* (1939) 62 C.L.R. 531, 532.
(4) *Re Bank of Hindustan, China and Japan, Alison's Case* (1873) 9 Ch. App. 1 at p. 26.
(5) *Flitters* v. *Alfrey* (1874) L.R. 10 C.P. 29.
(6) *Marginson* v. *Blackburn Borough Council* [1939] 1 All E.R. 273.
(7) *Ord* v. *Ord.* [1923] 2 K.B. 432.

On appeal by A. Mohamed Shariff & Co., Ltd., the defendants, against the decision of the learned trial Judge as regards point (3),

Held: (1) the point decided by the then Chief Justice in Suit No. 1532 of 1953 was that the judgment creditor, A. Mohamed Shariff & Co., Ltd., had reasonable grounds for refusing to give consent to the entry of satisfaction of judgment as it was by no means clear that the compromise was binding;

(2) the then Chief Justice did not presume to decide the question of the validity of the compromise, which was the point to be decided by the High Court;

(3) the order of the High Court was right.

CIVIL SUIT.

K. E. Hilborne for the plaintiff.

T. H. A. Potts for the defendants.

Cur. Adv. Vult.

Ambrose J.: On the 24th September, 1953, the present defendants, obtained judgment for $40,125.54 against the present plaintiff in Suit No. 1532 of 1953. In the present suit the present plaintiff claims (1) a declaration that the present defendants' rights under the judgment were superseded by an alleged instrument of compromise dated the 29th October, 1953, and (2) repayment of $3,192.85, being the amount by which the sum received by the present defendants on execution of the judgment exceeds the sum due to them under the alleged instrument of compromise.

In paragraph 10 of the amended defence it is alleged that the present plaintiff is estopped from making his present claim by the dismissal of his application by summons in Chambers dated the 3rd April, 1958, in the former suit for an order that satisfaction of the judgment be entered.

By consent of the parties, the defence of estoppel by judgment was taken as a preliminary point of law. It appeared from the way in which it was pleaded that the alleged estoppel related to the entire cause of action. Such a defence is treated as a defence of *res judicata* in *Halsbury's Laws of England*, 3rd ed., Vol. 15, at p. 184. There it is said :

> " Where *res judicata* is pleaded by way of estoppel to an entire cause of action, it amounts to an allegation that the whole legal rights and obligations of the parties are concluded by the earlier judgment, which may have involved the determination of questions of law as well as findings of fact."

It appeared, however, from the argument of counsel for the defendants that the alleged estoppel related to a particular issue decided at the hearing of the summons in Chambers. He cited *Outram* v. *Moorewood*, (1) and submitted that a party is precluded from contending the contrary of any precise point which, having been once distinctly put in issue, has been solemnly found against him. This kind of estoppel by judgment is referred to at page 182 of *Halsbury's*